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THE CANADA-UNITED STATES FREE TRADE AGREEMENT AND THE GATT

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BIOGRAPHICAL NOTE

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He is the author of a study titled Canada, the GATT and the International Trade System, published in September 1984 by the Institute for Research on Public Policy, and co-author of The Canadian Import File: Trade, Protection and Adjustment, published in January 1987 by the Institute for Research on Public Policy. His other studies of trade policy include "Removing Barriers to Canada-United States Trade" (1987, with Tom Burns); "Managing Canada-U.S. Economic and Trade Relations" (1986, with Carol Osmond); and an unpublished manuscript "Consumer Interests in Canadian Trade Policy" (1982).

Mr. Stone graduated from Queen's University in Kingston, Ontario, in 1949 with a degree in economics and history. During the Second World War he served in the Royal Canadian Air Force as a pilot in Britain, North Africa and Western Europe.

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NOTICE BIOGRAPHIQUE

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M. Stone était au service du ministère des Affaires extérieures de 1949 à 1980. A l'étranger, il a occupé les postes suivants: conseiller économique à l'Ambassade du Canada à Washington, de 1963 à 1969; ministre (Affaires économiques) et représentant permanent adjoint de la Mission permanente du Canada auprès de l'Office des Nations-Unies à Genève, de 1973 à 1977; et ambassadeur du Canada au Pakistan et en Afghanistan, de 1977 à 1978.

A la mission du Canada à Genève, il était chargé de faire valoir les intérêts du Canada dans les organismes internationaux traitant de questions relatives au commerce, à l'économie et à l'environnement, notamment l'Accord général sur les tarifs douaniers et le commerce (GATT). Au début des années soixante-dix, il a été détaché à Environnement Canada, où il a coordonné, à titre de représentant du Canada, les négociations qui ont abouti en 1972 à l'Accord entre le Canada et les États-Unis relatif à la qualité de l'eau dans les Grands Lacs.

Il est l'auteur d'une étude intitulée Canada, the GATT and the International Trade System, publiée en septembre 1984 par l'Institut de recherches politiques, et coauteur de The Canadian Import File: Trade, Protection and Adjustment, publié en janvier 1987 par le même institut. Il a publié d'autres études portant sur la politique commerciale, notamment "Removing Barriers to Canada-United States Trade" (en 1987, avec Tom Burns) et "Managing Canada-U.S. Economic and Trade Relations" (en 1986, avec Carol Osmond), auxquelles s'ajoute un manuscrit non publié, intitulé "Consumer Interests in Canadian Trade Policy" (1982).

M. Stone a obtenu, en 1949, un diplôme en économie et en histoire de l'Université Queen's à Kingston (Ontario). Au cours de la Deuxième Guerre mondiale, il a servi dans l'Aviation royale du Canada à titre de pilote en Grande-Bretagne, en Afrique du Nord et en Europe occidentale.

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Concerns have been raised in Canada as well as in the United States that a free trade agreement between the two countries will conflict with and weaken the multilateral trade system that has been built during the post-war years around the General Agreement on Tariffs and Trade (GATT). In Canada, fears have also been expressed that entering into a free trade agreement with the world's largest economic power will limit Canada's ability to play its traditional, leadership role in GATT, and limit Canada's independence in its trade relationships with other countries. These concerns must be taken seriously, and deserve continuing analysis and public debate. Canada and the United States have been among the stoutest champions of the GATT, since the start. Any weakening of support by the two North American countries would have damaging consequences for the multilateral trade system.

The following is an analysis of the relationship of the Canada-United States Free Trade Agreement (FTA) with GATT, its compatibility with the GATT rules governing free trade areas, and the ability of members of free trade areas to participate independently in GATT and carry on their own, independent trade policies and relationships with the rest of the world.

Relationship of the Agreement with GATT

In 1935, thirteen years before the GATT came into being, Canada and the United States concluded a bilateral trade agreement, and extended it in 1938, that substantially lowered the very high tariffs on bilateral trade which were in place during most of the inter-war period. This agreement was suspended in 1947, when the two countries became members of the GATT.[1] Since that time, GATT has served as Canada's main trade agreement with the United

States, as well as the main trade agreement of both countries with other GATT members. Gatt has provided a body of multilaterally agreed rules that govern their cross-border trade as well as their trade with other countries; it has provided a framework for the progressive reduction of tariffs and other barriers to cross-border trade along with barriers to world trade; and it has provided processes that the two countries have used to resolve a number of bilateral trade disputes as well as their disputes with other GATT members. Outside GATT, and until the present time, Canada and the United States have concluded only a few purely bilateral trade arrangements, notably the Automotive Agreement of 1965 that opened up near-free trade in the automotive sector.

The Agreement signed on January 2, 1988, by Prime Minister Mulroney and President Reagan will not replace GATT as the basic trade agreement between the two countries, nor can it be viewed as an alternative to GATT and its supplementary codes. The Agreement will leave intact all of the GATT rights and obligations of each country vis-à-vis the other, while supplementing these with additional, bilateral rights and obligations. For example, GATT rules will continue to govern the countervailing and anti-dumping systems of the two countries — at least for the next 5-7 years while new joint rules governing the use of countervailing and anti-dumping duties are being drawn up.[2] And the GATT processes will remain available to settle disputes arising from the many continuing commitments of the two countries under GATT.[3]

The Free Trade Agreement should thus be viewed as extending and elaborating the long-standing commitments of the two countries to each other under GATT. It will complete the process of cross-border trade liberalization which has been underway under GATT and on a bilateral basis since the mid-1930s. The removal of tariffs on cross-border trade, which will take place in stages over 10 years, would be almost impossible to achieve through the process of multilateral negotiations under GATT. It would require the removal of Canadian and American tariffs on an MFN basis, and this would involve, in effect, the agreement of most other GATT members to reciprocate by removing their import tariffs. This is a unlikely prospect in the forseeable future, although it is to be hoped that existing world tariffs will be lowered substantially as an outcome of the current Uruguay Round of multilateral trade negotiations under GATT. In this regard, the liberalization achieved by Canada and the United States under the bilateral Agreement will set a good example for further trade liberalization on a global scale.

The Agreement will reconfirm and extend GATT rules in a number of non-tariff areas as between the two countries. It contains special rules, beyond those in GATT, for the use of safeguard (escape clause) measures when these are used to limit surges in imports from each other of particular products and also when such measures are imposed on a global basis.[4] The Agreement will enlarge the volume of purchases by the two federal governments that will be open to firms in the two countries, beyond the opportunities opened by the GATT code on government procurement.[5] It will go beyond the GATT rules and prohibit the subsidization of cross-border exports of agricultural products.[6] And the Agreement clarifies and elaborates the GATT rules that are aimed at the

avoidance of product standards that obstruct bilateral trade.[7] In some other non-tariff areas, the existing GATT rules alone will continue to apply to cross-border trade, as before. These include, as noted above, the GATT rules governing countervailing and anti-dumping duties at least for the next 5-7 years.

The bilateral Agreement also covers a number of areas that have not, so far, been covered by GATT rules, but where GATT rules might well be put in place as an outcome of the Uruguay Round. Some of these elements of the Agreement deal with long-standing or potential frictions between the two countries, for example, in regard to controls on foreign investment, cross-border trade in certain services sectors, and trade in energy. The provisions of the bilateral Agreement in these sectors could possibly set an useful example and precedent for the negotiations in the Uruguay Round. In some other areas that are not covered by the bilateral Agreement, such as the protection of intellectual property, efforts are being made in the Uruguay Round to draw up international rules and disciplines that might then be applied by Canada and the United States to each other.[8]

The GATT rules and procedures for the settlement of trade disputes will remain available to the two countries to deal with bilateral issues, especially those involving the extensive commitments to each other that will remain under GATT. But the bilateral Agreement also creates its own processes for the resolution of disputes arising from its operation. These are modelled on the GATT procedures but improve on them in several important ways. For example, Chapter 18 of the FTA provides for recourse to "binding arbitration", by agreement between the two countries, involving the use of independent, joint

panels as well as recourse to panels whose findings and recommendations will be advisory in nature. There is no corresponding provision for binding arbitration in GATT. Under the FTA, this arbitration process will be mandatory if one side complains about a "safeguard" measure on imports taken by the other. Moreover, under the Agreement, either party can compel a dispute to be referred to an independent binational panel for investigation and recommendations; under the GATT this process requires the agreement of both parties to a dispute.

There are separate provisions in Chapter 19 of the Agreement for creating binational panels to carry out "judicial reviews" of final determinations in either country for the use of countervailing and antidumping duties. These binational review panels will replace the current system of judicial reviews of final determinations by domestic courts. Chapter 19 also prohibits either country from applying to the other changes in its antidumping or countervailing duty laws unless the other country is specifically named; and any changes must be consistent with GATT rules as well as with "the objective and purpose" of the bilateral Agreement. Moreover, either country may require a review by a binational panel of any changes in the other's antidumping or countervailing duty laws, in the event of a dispute about these changes. These provisions, as noted earlier, will apply over the next 5-7 years while new bilateral rules for countervailing and antidumping systems are being negotiated. They go well beyond any GATT rules, and are precedent-setting in subjecting decisions by domestic government agencies to an international court process.[9]

Consistency of the Agreement with GATT

GATT member countries have always had the right to form free trade areas (and customs unions) provided these conform to the rules that are set out in GATT Article XXIV; and many such regional trade groups have been formed over the past few decades. The member countries have not needed to seek special permission to form such groups, unless the arrangements have departed in significant ways from the GATT rules. In these circumstances the countries concerned have had to obtain special "waivers" from their GATT obligations, which require the approval of two-thirds of the GATT membership.

No such waiver will be needed for the Canada-U.S. Free Trade Agreement which is generally considered to be fully compatible with the Article XXIV rules of GATT. These rules call for the removal of "duties and other restrictive regulations of commerce with respect to substantially all the trade" between members of free trade areas either immediately or over a reasonable period of time. The Agreement will achieve this result over the next 10 years. The Agreement also accords with the GATT rule that prohibits member countries from using their arrangement to raise new barriers to trade with third countries.[10]

The GATT rules permit the continued maintenance of restrictions on agricultural trade between members of free trade areas where these are needed to protect supply management and similar farm support programs.[11] Canada's continued restrictions on imports of dairy products, eggs and poultry are thus in conformity with the rules of GATT. Although U.S. import restrictions on dairy

products, sugar and some other agricultural products may not be similarly in accord with GATT rules, they are sheltered by a special waiver obtained by the United States in the mid-1950s.[12] The GATT rules also permit members of a free trade area to maintain restrictions on imports from each other that are imposed for environmental reasons (i.e. "to protect human, animal or plant life or health"), for national security reasons, and for other some other specified reasons. They also allow members to impose restrictions on their exports of particular products to each other under conditions of "general or local short supply", provided such restrictions do not deny the importing country an "equitable share" of the restricted products.[13]

The GATT rules thus have, in effect, established a large part of the framework within which the Canada-U.S. Free Trade Agreement, like many other regional trade groups, has been created. The Canada-U.S. Agreement is probably more in line with the GATT rules than most other free trade areas and customs unions that have been established among GATT member countries. The agreements that established the European Community and the European Free Trade Association, for example, contain features that are widely regarded as inconsistent with GATT, although the New Zealand-Australia and the U.S.-Israel free trade arrangements have encountered fewer objections in GATT.[14]

In accordance with established GATT procedures, Canada and the United States have notified the GATT Director General of the conclusion of their bilateral Agreement. At some early stage, a GATT working group will doubtless be established to examine the Agreement in detail. Although is not expected that the Agreement will encounter serious difficulties in Geneva, other GATT

members will of course have an opportunity to question its terms and seek to resolve any problems created for their own trade interests. Third country automotive exporters, for example, might protest the somewhat more demanding rules of origin that will have to be met for automotive products to qualify for duty-free treatment under the bilateral Agreement.[15]

The actual approval of the GATT Contracting Parties is not required for Canada and the United States to proceed to implement the Free Trade Agreement. The European Community, the European Free Trade Association, and most other regional trade groups have neither been approved nor disapproved in Geneva but have nevertheless operated for many years. The GATT Contracting Parties could similarly withhold judgment on the Canada-U.S. Agreement without in any way blocking it, although their approval is more likely. They will probably, however, require the submission of periodic reports on its implementation and reserve the right to review its operation.

Trade Policy Independence

Members of free trade agreements, unlike members of customs unions, are able to maintain their own independent trade policies and relationships with third countries. They also retain, of course, their separate membership in GATT. This means that Canada, and also the United States, will be free to maintain different levels of tariffs and other barriers to trade with third countries; and the two countries will be able to negotiate separately in GATT and elsewhere with third

countries to improve access to world markets, or to enter into their own, separate arrangements with third countries to achieve their particular objectives.

Canada and the United States will thus continue to participate separately and independently in GATT and in the Uruguay Round of multilateral trade negotiations. While both governments have stated their intention to play active, leadership roles in these negotiations, the goals and objectives of Canada and the United States will not always be in harmony; but there is nothing in the Agreement to prevent Canada from pursuing its own particular negotiating objectives and strategies. The Agreement does specifically call for bilateral cooperation in liberalizing and improving the rules governing world agricultural trade, and it introduces some new concepts which will be useful in pursuing these common objectives, especially in regard to the measurement of the trade effects of domestic subsidy programs.[16] This undertaking, however, has not prevented Canada from pursuing objectives for agricultural trade in the Uruguay Round that are rather different from U.S. objectives.

Bilateralism v/s Multilateralism

As noted earlier, the Canada-U.S. Free Trade Agreement is not an alternative to GATT, but complements and extends GATT as between the two countries; and GATT will remain as a basic trade agreement between Canada the the United States. The two countries will, of course, extend tariff preferences to each other, and this is an important element of the Agreement. Their MFN tariffs, where these apply, will be removed on each other's goods, but their

separate tariffs will continue to be imposed on imports subject to duty from other countries, whether on an MFN basis, under special preferential schemes such as those for less developed countries, or otherwise. At the same time, exporters in both countries whose goods enjoy free and preferential access in the other market can be expected to exert pressure to retain their preferential access and will discourage the reduction of duties that apply on the other side of the border to similar goods from other sources. Canadian exporters may also tend to concentrate on the open, preferential U.S. market, and overlook broader international markets. In this way, pressures to maintain bilateral and preferential advantages and trade patterns in North America could work against trade liberalization on a global basis, and weaken the multilateral trade system.

But the Free Trade Agreement will give rise to balancing counterpressures. Canadian producers of some goods are likely to press for reductions in Canada's tariffs on imports from third countries of machinery, components and other inputs in order to reduce their production costs and help them meet increased competition from the United States. Similar pressures could be exerted across the border by U.S. producers for the reduction of U.S. tariffs on their imports of inputs from third countries. Moreover, in both countries consumer groups will doubtless continue to urge reductions in tariffs and other barriers to imports from third countries.

It may also be expected that other countries will be readier than in the past to negotiate reductions in their own tariffs in order to secure reductions in Canada and U.S. tariffs, and thus reduce adverse effects of the preferential Canada-U.S. Agreement on their own export interests. And, in return, Canadian

and U.S. policy makers may be more prepared to reduce tariffs against third countries, with the prospect that as a result of the bilateral Agreement their domestic producers will become more competitive and better able to meet global import competition.

On balance, it is difficult to make a convincing case that the bilateral Agreement will stand in the way of global tariff liberalization. There are precedents, as well as theoretical reasons, for expecting the opposite to happen. Following the formation of regional, preferential groups in Europe, the member countries proceeded in three successive rounds of negotiations in GATT to bargain substantial reductions in their tariffs and other barriers to trade with outside countries, including Canada and the United States, at least for non-agricultural products.

As for the non-tariff elements of the Free Trade Agreement, some of these, as noted earlier, may provide useful models and precedents for the negotiation of multilateral arrangements in the areas concerned. This would, of course, require other GATT countries to accept the same kind of rules and disciplines that Canada and the United States have accepted to apply to each other. Also, the experience gained in the Canada-U.S. negotiations of the bilateral Agreement has doubtless better equipped Canadian and U.S. negotiators to play leadership roles in efforts during the Uruguay Round to develop new or improved rules and arrangements on a global basis in a range of non-tariff areas.

There is no evidence to date that the Free Trade Agreement has changed or undermined the positive approaches and positions of either government towards strengthening and improving the GATT system. The bilateral Agreement, indeed, could well lead to a strengthening of the GATT system rather than work against it. The liberalization of trade in North America on a preferential basis could provide new incentives for dismantling trade barriers on a global basis. Over the past several decades a vast preferential tariff-free commercial system has grown up in western Europe surrounding the European Community. On both sides of the Atlantic pressures could now emerge for the elimination or reduction of trade preferences; and the current Uruguay Round of multilateral trade negotiations offers a framework to initiate such a process, as well as to pursue broader efforts to liberalize trade in goods and services on a global basis. Optimistically, the eventual outcome could be the complete removal of tariffs and many other barriers to trade at least by the developed countries for industrial products.

It is significant, in this regard, that the motivation for the bilateral Agreement was to create a more open trade and economic system between the two countries, not to insulate them from outside competition or to create an exclusive North American trading bloc. While cross-border trade is of immense importance to both countries, especially for Canada, each has a large stake in its trade and economic relations with other countries — governed in large part by commitments under GATT and other multilateral organizations. Neither country can afford to damage its trade and economic relationships with Western Europe, Pacific Rim countries and other trading partners, or damage the multilateral systems within which these relationships are maintained. The prospect of a

Canada-U.S. free trade area has thus not caused serious misgivings by outside countries; indeed their reaction to such an arrangement has been generally positive. The Director-General of GATT, Arthur Dunkel, in a recent address in Toronto gave his support to the Free Trade Agreement as a contribution to efforts to further liberalize world trade on a global basis.[17] The leaders of the seven economic summit countries, meeting in Toronto in June 1988, similarly expressed support for the Canada-U.S. Free Trade Agreement.[18]

Conclusions

The Canada-United States Free Trade Agreement will complement but will not replace GATT as a basic trade agreement between the two countries, and GATT rules will continue to govern important areas of bilateral trade, as in the past. The Free Trade Agreement conforms to the GATT rules that govern the formation and operation of free trade areas, and is not likely to give rise to serious objections by other GATT member countries, although these countries can be expected to raise problems that may be created for their own particular trade interests.

Canada and the United States will continue to maintain their own separate and distinct trade policies and relationships with third countries, as well as their independent membership in GATT. Both countries can be expected to play active, leadership roles in the Uruguay Round of multilateral trade negotiations under GATT, where the objectives of the two countries may well differ. The bilateral Agreement could set useful examples and precedents for global trade liberalization and for the strengthening of the GATT system; and it could provide

new incentives for efforts during the Uruguay Round to reduce preferences within the world trade system and remove tariffs and other barriers on a global basis.

The Canada-U.S. Agreement could thus, on balance, create pressures to strengthen the GATT system, and not to weaken it. There is no evidence to date that the Agreement has changed or weakened the positive approaches and positions of either country towards strengthening, enlarging and improving the GATT system. Indeed, failure of the Free Trade Agreement to come into force would be widely regarded in other countries as well as in Canada and the United States as a set-back to efforts in the Uruguay Round to liberalize world trade on a global basis, and to strengthen and extend the GATT multilateral trade system.

Footnotes:

1. On October 30, 1947, when Canada and the United States signed the General Agreement on Tariffs and Trade, they also signed a supplementary bilateral agreement to the effect that the 1938 trade agreement would "remain inoperative" as long as the two countries remained members of the GATT. (Canada Treaty Series, 1947, No. 27).

2. Article 1902 of the FTA allows each country to continue to apply its antidumping and countervailing duty laws, within the framework of GATT rules, to goods imported from the other side; Article 1906 calls for the development over a period of 5-7 years of "a substitute system of rules" for antidumping and countervailing duties to be applied to bilateral trade. Meanwhile, the GATT rules in these areas are also the subject of negotiations in the Uruguay Round.

3. Article 1801 of the FTA provides that disputes arising both out of the Agreement and the GATT can be settled in either forum "according to the rules of that forum, at the discretion of the complaining party"; however, the two processes cannot be used at the same time to deal with a particular dispute. Use of the GATT processes to deal with bilateral disputes arising from the operation of the FTA would, of course, require the agreement of the GATT members. In 1949, the GATT Contracting Parties declared that the determination of rights and obligations between governments arising under a bilateral agreement "is not a matter within the competence of the Contracting Parties"; but they also declared that it was within their competence "to determine whether or not action under such a bilateral agreement would or would not conflict with the provisions of the General Agreement". See GATT, Basic Instruments and Selected Documents, Volume II, Geneva, May, 1952, p. 11.

4. GATT Article XIX permits a member country to impose a "safeguard measure" (i.e. to increase the tariff or impose quantitative restrictions) on an imported product, under specified conditions, if a surge in imports is causing or threatening serious injury to domestic producers of the product. Chapter 11 of the FTA sets out special rules for the application of such safeguard measures to bilateral trade. Among other things, any such safeguard measures cannot increase the tariff on a particular product beyond the prevailing MFN rate; and a safeguard action cannot last more than three years or beyond the end of the ten-year transition period. A safeguard measure imposed on a global basis cannot be applied to exports from the other country unless such exports are an important cause of injury to producers in the importing country. A dispute regarding the imposition of a safeguard measure on bilateral trade must, on the request of either side, be referred to an independent panel for "binding arbitration".

5. Under a GATT code on government procurement, concluded in 1979 as an outcome of the Tokyo Round, the signatory countries opened up purchases by specified lists of their federal government agencies to competition from firms in other signatory countries. Chapter 13 of the FTA extends these GATT commitments as they apply to Canada-U.S. trade. Chapter 13 does not change the lists of Canadian and U.S. federal departments and agencies that are covered by the GATT procurement code, but it lowers the threshold of purchases covered by the GATT code from about Cdn $238,000 to about Cdn $33,000. Chapter 13 also strengthens the rules of the GATT code relating to the "transparency" of federal government procurement practices.

6. GATT Article XVI prohibits the use of export subsidies on manufactured and industrial products, but not on agricultural products. Article 701 of the FTA prohibits export subsidies as well "on any agricultural goods . . . that are exported directly or indirectly to the territory of the other party".

7. See Chapter 6 of the FTA, by which the two countries essentially reaffirm their commitments under the GATT code on technical barriers to trade, concluded in 1979. Under this code, the signatories undertook not to use product standards and other such regulations as disguised obstacles to trade, and to work towards the development of internationally accepted standards. Chapter 6 of the FTA contains additional undertakings regarding the "transparency" of the practices Canadian and U.S. federal governments for the development of their standards and for testing methods. It does not call for the harmonization of Canadian and U.S. standards, although it requires that each country "to the greatest extent possible . . . shall make compatible its standards - related measures and procedures for product approval with those of the other Party".

8. The Declaration adopted by trade Ministers in September 1986 at their meeting at Punta del Este, Uruguay, sets out the objectives for negotiations in the Uruguay Round on trade in services and on the trade-related aspects of foreign investment and intellectual property. Negotiations in these areas are proceeding in Geneva in the negotiating groups that were created following the Punta del Este meeting. Descriptions of the FTA provisions regarding services and foreign direct investment are contained in articles by Murray G. Smith and A.E. Safarian in John Crispo, editor, Free Trade: The Real Story, Gage, Toronto, 1988.

9. The dispute settlement provisions of FTA Chapters 18 and 19 are examined in articles by L.H. Legault, Robert E. Hudec, Julius Katz, Debra P. Steger, Shirley A. Coffield, Richard G. Dearden and Gary N. Horlick and Debra A. Valentine in Donald M. McCrae and Debra P. Steger, editors, Understanding the Free Trade Agreement, (Proceedings of a Conference held at the University of Ottawa on January 22, 1988), Institute for Research on Public Policy, Halifax, 1988. It may be noted here that the Chapter 19 provisions in the FTA for judicial review of final determinations of antidumping and countervailing duties do not preclude either country from challenging decisions taken in the other country under GATT procedures.

10. The following extracts from GATT Article XXIV contain the key rules regarding the formation of free trade areas:

> "The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose . . . of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.
>
> Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a free-trade area of the adoption of an interim agreement necessary for the formation of . . . a free-trade area; Provided that:
>
> - with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement, as the case may be.
>
> For the purposes of this Agreement:
>
> - A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories."

11. Article XXIV permits members of free trade areas to maintain quantitative restrictions on agricultural products where, in accordance with Article XI, these are necessary to support "governmental measures which operate . . . to restrict the quantities of the like domestic product permitted to be marketed or produced . . . "

12. The text of the U.S. waiver is in GATT, Basic Instruments and Selected Documents, Third Supplement, Geneva, June 1955, pp. 32-37.

13. See GATT Article XX (b) and (f) and Article XXI. Members of free trade areas may maintain the restrictions covered by these provisions on trade between themselves.

14. In August 1988 New Zealand and Australia signed a protocol to their 1983 Closer Economic Relations - Trade Agreement, by which they undertook to remove by July 1, 1990, all remaining tariffs, quantitative import restrictions and protective export controls on bilateral trade, as well as to implement a range of other measures to liberalize their bilateral trade in goods and services. The New Zealand-Australia arrangement thus appears to conform fully with the requirements of GATT Article XXIV regarding the formation of free trade areas.

15. The FTA incorporates "rules of origin" which define these goods entitled to "free trade area" treatment when exported from one country to the other. Chapter 3 of the FTA requires that automotive products must incorporate 50 per cent of the "direct production costs" in one or other country, or both. Under the previous rules of the Automotive Agreement, 50 per cent of the "invoice price" needed to be incurred in Canada and/or the United States. The new rule is the equivalent of a 70 per cent requirement on the old basis. (See FTA Chapter 10). It is unclear, however, whether rules of origin for free trade areas fall under GATT rules.

16. Article 705 of the FTA calls for the elimination of Canadian import licences for wheat, barley and oats and their products, when U.S. grain support prices become equal to Canadian grain support levels. Annex 705.4 sets out methods for calculating support levels.

17. The GATT Director General gave support to the FTA in an address on April 19, 1988, to the International Business Council in Toronto.

18. The following is an excerpt from the "Economic Declaration" issued by the Toronto Economic Summit on June 21, 1988: "We strongly welcome the Free Trade Agreement between Canada and the USA . . . It is our policy that (this) development(s) . . . should support the open, multilateral trading system and catalyze the liberalizing impact of the Uruguay Round".